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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** SeaSpace  
**File:** B-239295  
**Date:** July 13, 1990

Ivor F. Thomas, Esq., for the protester.  
Elaine A. Eder, Esq., Department of Transportation, for the agency.  
Stephen Gary, Esq., David A. Ashen, Esq., and  
John M. Melody, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

1. Award to offeror whose proposal in negotiated procurement failed to conform to material specification requirement for an "off-the-shelf," proven production system was improper.
2. In determining the actual meaning of a particular solicitation requirement, the solicitation must be read as a whole and in a manner that gives effect to all provisions of the solicitation; when solicitation is read as a whole, provision in statement of work that agency "desires" "off-the-shelf" proven production system clearly means that an "off-the-shelf" system is a mandatory requirement.

### DECISION

SeaSpace protests the award of a contract to Global Imaging, Inc. under request for proposals (RFP) No. DTCG39-89-R-80862, issued by the United States Coast Guard Academy, Department of Transportation, for an integrated hardware/software system for the processing of satellite data. SeaSpace asserts that the Coast Guard improperly waived mandatory solicitation requirements in making the award to Global, to the prejudice of SeaSpace.

We sustain the protest.

The solicitation requested proposals for a firm, fixed-price contract to provide a system for the real-time acquisition, archiving, processing, and display of earth remote sensing data, particularly high resolution picture transmissions,

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from orbiting satellites. The RFP stated that award would be made on the basis of the best combination of technical and business proposals; with respect to evaluating technical proposals, it cautioned that failure to address any specific solicitation requirement would be viewed by the evaluation panel as not meeting that requirement. The requirements at issue here were set forth in the solicitation statement of work (SOW) as follows:

"1.1.3. The desired system shall be a proven production or limited production design. This is not a request for a prototype system. An 'off-the-shelf' system is desired.

[Text Omitted]

"2.6. Additional Requirements

"2.6.1. The system shall be a proven, production or limited production design. This is not a request for a prototype system.

"2.6.1.1. An offeror shall be able to demonstrate a capability for providing a system as described . . . by providing a list of owners/users of the offeror's systems already in use." (Emphasis in original.)

Prior to the closing date for receipt of proposals, the Coast Guard issued amendment No. 2, responding to several requests for clarification of solicitation requirements. Question and answer No. 6 is pertinent here:

"Q.6. What is the rationale behind Requirements 1.1.3, 2.6 of the SOW? (The potential offeror) has an 'off-the-shelf' solution for the Data Acquisition Module, but no corresponding integrated product for the Data and Image Processing Module. A strict interpretation of the above mentioned requirements would cause any proposal by us to be unresponsive.

"A.6. The Government desires a proven production or limited production design. This is not a request for a prototype system. An 'off-the-shelf' system is desired. The desired system shall include both the Data Acquisition and Data and Image Processing Modules, in an integrated product. . . . [T]he Government does not desire to procure individual components nor to develop the interfaces required for individual components or

modules to work as an integrated system. Furthermore, the Government does not desire a 'prototype' or 'one-of-its-kind' system due to past, less than acceptable experiences with prototypes of specialized scientific equipment."

Based on its finding that the two proposals received, from SeaSpace and Global, were technically acceptable, the agency made award to the lower priced offeror, Global, as offering the best combination of technical merit and cost.

SeaSpace objects that the award to Global was made in disregard of the mandatory solicitation requirements at sections 1.1.3, and 2.6 for an off-the-shelf system; according to SeaSpace, Global's proposed system was not yet in production. SeaSpace further asserts that had it known that the requirement for an off-the-shelf system would be waived, it would have proposed a system of its own that was still under development, at a price approximately \$100,000 lower than it in fact proposed.

The Coast Guard does not dispute the protester's contention that Global's system was not an off-the-shelf, in-production system. Rather, while the agency concedes that the solicitation as issued did require a proven, in-production system, it argues that this solicitation requirement was relaxed by amendment No. 2 in order to enhance competition, and that Global met the relaxed requirement. Specifically, according to the agency, the answer to question No. 6 clearly indicated to prospective offerors that an off-the-shelf system was no longer required, but instead was merely "desired." We disagree.

In reviewing an agency's selection decision, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. See Cygna Project Management, B-236839, Jan. 5, 1990, 90-1 CPD ¶ 21. In determining the meaning of a particular solicitation provision, a solicitation must be read as a whole and in a manner that gives effect to all provisions of the solicitation. See System Dev. Corp., B-219400, Sept. 30, 1985, 85-2 CPD ¶ 356; see generally Teledyne Brown Eng'g, Inc., B-237368, Feb. 16, 1990, 90-1 CPD ¶ 285.

Here, we find that the agency's evaluation of Global's proposal was not in accordance with the stated evaluation criteria. Again, although the solicitation as issued provided in section 1.1.3 of the specification that an "off-the-shelf" system was desired, the Coast Guard does not dispute that section 2.6 of the specification clearly indicated that the agency's "desire" in this regard

represented a mandatory solicitation requirement and was not merely precatory language. Specifically, section 2.6 states that the system "shall be a proven production or limited production design," and that the offeror "shall be able to demonstrate" this by providing a list of users of "systems already in use." (Emphasis added.)

Furthermore, when the clarification and the solicitation are read as a whole, we believe it is clear that, notwithstanding the continued use of the word "desire," the amendment did not alter the requirement for off-the-shelf equipment as set forth in the solicitation as issued. To the contrary, the language used by the agency in its clarification tended, if anything, to reaffirm that an off-the-shelf system was required. Specifically, the government's answer stated that "this is not a request for a prototype system . . . [and] the Government does not desire a 'prototype' or 'one-of-its-kind' system due to past, less than acceptable experiences with prototypes of specialized scientific equipment." In our view, explaining and affirming the agency's rationale for requiring an off-the-shelf system--namely, its adverse experience with systems that were not off-the-shelf--is inconsistent with the agency's view that the amendment relaxed the requirement.


We conclude that the solicitation, even as amended, clearly required an "off-the-shelf" system. The agency does not claim that Global offered the required "off-the-shelf" system, and the record indicates that it did not.<sup>1/</sup> The agency's waiver of the "off-the-shelf" requirement in favor of Global placed SeaSpace at a competition disadvantage; as noted above, SeaSpace states that the agency's interpretation of the specification would have permitted it to offer a significantly less expensive system than under development. Accordingly, the award to Global was improper. See Consulting and Program Management, 66 Comp. Gen. 289 (1987), 37-1 CPD ¶ 229.

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<sup>1/</sup> For example, when informed by the Coast Guard of SeaSpace's protest, Global advised the agency that, "by the time of the proposed delivery of [Global's]--system to the Coast Guard, the [data module] will have undergone extensive use." (Emphasis added.) Although the awardee claims (in an untimely filed comment on the protest) that it has installed systems at various locations, its responses to the agency's questions during negotiations indicated that it had not yet installed an integrated, overall system as required by the RFP.

In view of the Coast Guard's evident conclusion that Global's nonconforming system satisfied its actual needs, it appears that the specification overstated the agency's minimum needs. Further, it also appears that relaxing the specifications to permit the proposal of developmental systems may offer the possibility of significant cost savings. Accordingly, by letter of today to the Secretary of Transportation, we are recommending that the agency revise the specifications to reflect its actual minimum needs, reopen negotiations, and provide offerors an opportunity to submit revised proposals. Following evaluation of the revised proposals, the contract with Global should be terminated for the convenience of the government if appropriate. We further find that SeaSpace is entitled to be reimbursed its costs of pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1)(1990); see Falcon Carriers, Inc., 68 Comp. Gen. 206 (1989), 89-1 CPD ¶ 96.

The protest is sustained.

  
for Comptroller General  
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